



# RULE-MAKING ORDER

**CR-103 (June 2004)**  
(Implements RCW 34.05.360)

**Agency:** Department of Social and Health Services, Health and Recovery Services Administration

☒ **Permanent Rule**  
☐ **Emergency Rule**

**Effective date of rule:**

**Permanent Rules**

☒ 31 days after filing.  
☐ Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

☐ Immediately upon filing.  
☐ Later (specify) \_\_\_\_\_

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

☐ Yes ☒ No If Yes, explain:

**Purpose:** The rule implements House Bill 2304 (Legislation adopted by 2005 legislature) by giving the department further authority to:

(1) File a lien against the real property of a living resident of a nursing home or other medical institution (known as Tax Equity and Fiscal Responsibility Act, or TEFRA liens) if it determines, after notice and opportunity for a hearing, that the individual cannot reasonable be expected to be discharged from the medical institution and return home; (2) Expand the statute of limitations from 10 years to 20 years for Medicaid liens placed for collections of debts due the department; (3) Broaden the eligibility class of who may be entitled to deferred recovery when the recovery would cause an undue hardship. By broadening the eligible class for the exemption, the department is addressing the issue for all similarly affected citizens of the state and avoiding unintended adverse consequences of recovery; and (4) Revise the chapter using "Plain Talk" as directed by the Governor's Executive Order 05-03, dated March 24, 2005.

**Citation of existing rules affected by this order:**

Repealed: WAC 388-527-2792, and 2795  
Amended: WAC 388-527-2700, 2730, 2737, 2742, 2750, and 2790  
Suspended: None

**ADOPTION  
PERMANENT  
EMERGENCY**

**Statutory authority for adoption:** Chapter 292, Laws of 2005 (SHB 2304)

**Other authority :** RCW 43.20B.080, RCW 74.39A.170, 42 USC Sec. 1396p

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR 06-03-046 on January 10, 2006.

Describe any changes other than editing from proposed to adopted version: **See Attachment A.**

**EFFECTIVE DATE:**

9/14/06

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Bill Ward, DSHS-Office of Financial Recovery (OFR)  
Address: PO Box 45862  
Olympia WA 98504-5862

phone (360) 664-5501  
fax ( )  
e-mail: [wardbr@dshs.wa.gov](mailto:wardbr@dshs.wa.gov)

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

**Date adopted:**

8/14/06

**NAME (TYPE OR PRINT)**

Robin Arnold-Williams

**SIGNATURE**

*Robin Arnold-Williams for*  
*Robin Arnold-Williams*

**TITLE**

Secretary

**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE STATE OF WASHINGTON FILED	
AUG 14 2006	
TIME	9:15
WSR	06-17-075
	AM PM

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	<u>    </u>	Amended	<u>    </u>	Repealed	<u>    </u>
<b>Federal rules or standards:</b>	New	<u>    </u>	Amended	<u>    </u>	Repealed	<u>    </u>
<b>Recently enacted state statutes:</b>	New	<u>  7  </u>	Amended	<u>  6  </u>	Repealed	<u>  2  </u>

**The number of sections adopted at the request of a nongovernmental entity:**

New	<u>    </u>	Amended	<u>    </u>	Repealed	<u>    </u>
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**The number of sections adopted in the agency's own initiative:**

New	<u>    </u>	Amended	<u>    </u>	Repealed	<u>    </u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>    </u>	Amended	<u>    </u>	Repealed	<u>    </u>
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	<u>    </u>	Amended	<u>    </u>	Repealed	<u>    </u>
<b>Pilot rule making:</b>	New	<u>    </u>	Amended	<u>    </u>	Repealed	<u>    </u>
<b>Other alternative rule making:</b>	New	<u>  7  </u>	Amended	<u>  6  </u>	Repealed	<u>  2  </u>

# Attachment A to CR103 Rulemaking Order

For Rules Proposed as WSR 06-03-046 on January 10, 2006

Changes to the final rule compared to the proposed rule (strikeouts and underline text indicate deleted or added language since the proposal).

## AMENDED SECTION

### **WAC 388-527-2730 Definitions**

#### **“Estate”**

(3) For a client who died on or after XXXXX (the effective date of this rule): September 14, 2006,

~~(a) Any property and other assets to which the individual had any legal title or interest at the time of death (to the extent of such interest). This includes assets conveyed by the client to a survivor, heir, or assignee of the deceased through joint tenancy, tenancy in common survivorship, life estate, living trust, or other arrangement; and~~

~~(b) nonprobate assets as defined by RCW 11.02.005. and any life estate interest held by the recipient immediately before death.~~

**“Joint Tenancy”** means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including but not limited to, joint tenancy with right of survivorship ~~and tenants by the entirety.~~

**“Qualified Individual”** – means an heir or an unmarried individual who, immediately prior to the client’s death, was eighteen years of age or older, shared the same regular and permanent residence with the client and with whom the client had an exclusive relationship of mutual support, caring, and commitment.

## AMENDED SECTION

### **WAC 388-527- 2737 Deferring recovery**

(2) The department places a lien to secure the department’s interest in the estate while the conditions in subsection (1) of this section exist may place a lien against property to evidence the department’s right to recover after the deferral period specified in subsection (1) of this section.

## **AMENDED SECTION**

### **WAC 388-527-2750 Delay of recovery for undue hardship**

The department delays recovery under this section when the department determines that recovery would cause an undue hardship for the heir(s) a qualified individual(s). This delay is limited to the period during which the undue hardship exists. ~~The undue hardship must exist at the time of the client's death in order to be considered for a delay of recovery. The department limits an heir to one request for a delay of recovery due to undue hardship for each estate subject to recovery action.~~

- (1) Undue hardship exists when:
  - (a) The estate subject to the adjustment or recovery is the sole income-producing asset of one or more of the heirs qualified individuals and income is limited; or
  - (b) Recovery would ~~cause the heir, who would otherwise be eligible for public assistance, to become homeless~~ deprive a qualified individual(s) of shelter and the qualified individual lacks the financial means to obtain and maintain alternative shelter.
- (2) Undue hardship does not exist when:
  - (a) The adjustment or recovery of the decedent's cost of assistance would merely cause the heir qualified individual inconvenience or restrict his or her lifestyle; or
  - (b) The undue hardship was created as a result of estate planning methods by which the heir qualified individual or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid recovery from the estate.
- (4) When a delay of recovery is granted, the department may revoke the delay of recovery if the heir(s) qualified individual(s):
  - (a) ~~(i)~~ Fails to supply timely information and resource declaration when requested by the department;
  - (b) ~~(ii)~~ Sells, transfers, or encumbers title to the property;
  - (c) ~~(iii)~~ Fails to reside full-time on the premises;
  - (d) ~~(iv)~~ Fails to pay property taxes and utilities when due;
  - (e) ~~(v)~~ Fails to keep the property maintained and in good repair;
  - ~~(vi)~~ Fails to establish and continuously maintain adequate fire/casualty insurance in the amount equal to the state's lien interest. The insurance policies must identify the State of Washington as the primary payee on the property insurance policies. The person granted the delay of recovery must provide the department with documentation of the coverage status on an annual basis.
  - (f) ~~(vii)~~ Have a change in any circumstances under subsection (1) of this section for which the delay of recovery due to undue hardship was granted; or
  - (g) ~~(viii)~~ Dies.

## **AMENDED SECTION**

### **WAC 388-527-2790 Filing liens**

- (4)(b) Whether the decedent had legal title to the property; and
- (c) Whether a lien is allowed under the provisions of 42 USC 1396p(a) and (b).

## **AMENDED SECTION**

### **WAC 388-527-2810 Life estates and joint tenancy**

(1) The department may enforce a lien authorized under this section against a decedent's life estate or joint tenancy interest in real property held by the decedent immediately prior to his or her death until the lien is satisfied. The department will not apply a lien against a decedent's life estate interest providing the decedent had not previously transferred an interest in the property while retaining a life estate.

(a) The value of the life estate subject to the lien is the fair market value of the decedent's interest in the property subject to the life estate immediately prior to death.

(2) The department's methodology for calculating the value of the life estate is determined using the fair market value of the property.

(a) To determine the value of the life estate....

~~(b) To determine the value of the asset that was transferred for less than fair market value, the department subtracts the value of the life estate from the fair market value of the property. If the life estate is jointly owned, the department determines the decedent's proportionate share.~~

## **AMENDED SECTION**

### **WAC 388-527-2820 Liens prior to death**

(1) Subject to the requirements of 42 USC Section 1396p(a).....

(1)(b) The department determines, after notice and opportunity for a hearing, that the client cannot reasonably be expected to be discharged from the medical institution and return home; and

(c) None of the following are lawfully residing in the client's home:

(i) The client's spouse;

(ii) The client's child who is under age twenty-one, or is blind or permanently and totally disabled as defined in Title 42 USC Section 1382c; or

(iii) A sibling of the client (who has an equity interest in such income and who was residing in the client's home for a period of at least one year immediately before the date of the client's admission to the medical institution).

## **AMENDED SECTION**

### **WAC 388-527-2860 Interest assessed on past due debt**

(1) The recovery debt become past due and accrues interest at a rate of one percent per month on recoverable estate assets beginning nine month after the earlier of:

**WAC 388-527-2700 Purpose.** This chapter describes the requirements, limitations, and procedures that apply when the department recovers the cost of medical care from the estate of a deceased client and when the department files liens prior to the client's death.

**WAC 388-527-2730 ((Estate recovery)) Definitions.** ((For estate recovery purposes)) The following definitions apply to this chapter:

**"Contract health service delivery area (CHSDA)"** means the geographic area within which contract health services will be made available by the Indian Health Service to members of an identified Indian community who reside in the area as identified in 42 C.F.R. Sec. 136.21(d) and 136.22.

**"Estate"** means all ((real and personal)) property and any other assets that pass upon the client's death under the client's will or by intestate succession pursuant to chapter 11.04 RCW or under chapter 11.62 RCW. The value of the estate will be reduced by any valid liability against the ((deceased client's)) decedent's property at the time of death. An estate also includes:

(1) For a client who died after June 30, 1995 and before July 27, 1997, nonprobate assets as defined by RCW 11.02.005, except property passing through a community property agreement; or

(2) For a client who died after July 26, 1997 and before September 14, 2006, nonprobate assets as defined by RCW 11.02.005.

(3) For a client who died on or after September 14, 2006, nonprobate assets as defined by RCW 11.02.005 and any life estate interest held by the recipient immediately before death.

**"Heir"** means the decedent's surviving spouse and children (natural and adopted); or those persons who are entitled to inherit the decedent's property under a will properly executed under RCW 11.12.020 and accepted by the probate court as a valid will.

**"Joint tenancy"** means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenancy with right of survivorship.

**"Life estate"** means an ownership interest in a property only during the lifetime of the person(s) owning the life estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate



owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.

"**Lis pendens**" means a notice filed in public records warning that title to certain real property is in litigation and ((this)) the outcome of the litigation may affect the title.

"**Long-term care services**" means, for the purposes of this chapter only, the services administered directly or through contract by the department of social and health services for clients of the home and community services division and division of developmental disabilities including, but not limited to, nursing facility care and home and community services.

"**Medicaid**" means the state and federally funded program that provides medical services under Title XIX of the Federal Social Security Act.

"**Medical assistance**" means both Medicaid and medical care services .

"**Medicare Savings programs**" means the programs described in WAC 388-517-0300 that help a client pay some of the costs that Medicare does not cover.

"**Property**": Examples include, but are not limited to, personal property, real property, title property, and trust property as described below:

(1) "**Personal property**" means any property that is not classified as real, title, or trust property in the definitions provided here;

(2) "**Qualified individual**" means an heir or an unmarried individual who, immediately prior to the client's death, was eighteen years of age or older, shared the same regular and permanent residence with the client and with whom the client had an exclusive relationship of mutual support, caring, and commitment.

(3) "**Real property**" means land and anything growing on, attached to, or erected thereon;

((+3)) (4) "**Title property**" means, for the purposes of this chapter only, property with a title such as motor homes, mobile homes, boats, motorcycles, and vehicles.

((+4)) (5) "**Trust property**" means any type of property interest titled in, or held by, a trustee for the benefit of another person or entity.

"**State-only funded long-term care**" means the long-term care services that are financed with state funds only.

AMENDATORY SECTION (Amending WSR 99-11-076, filed 5/18/99, effective 6/18/99)

WAC 388-527-2737 **Deferring recovery.** ((When)) (1) For a client who died after June 30, 1994 ((and received services after June 30, 1994)), the department defers recovery from the estate ((is deferred)) until:

((1+)) (a) The death of the surviving spouse, if any; and  
((2+)) (b) There is no surviving child who is:  
((a+)) (i) Under twenty-one years of age, or  
((b+)) (ii) Blind or disabled as defined under chapter  
388-511 WAC.

(2) The department may place a lien against property to evidence the department's right to recover after the deferral period specified in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 04-10-060, filed 4/30/04, effective 6/1/04)

**WAC 388-527-2742 Services subject to recovery.** The department considers the medical services the client received and the dates when the services were provided to the client, in order to determine((s)) whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for Medicaid services and subsection (2) covers liability for state-only funded long-term care services. An estate can be liable under both subsections.

(1) The client's estate is liable for:

(a) All Medicaid services provided from July 26, 1987 through June 30, 1994;

(b) The following Medicaid services provided after June 30, 1994 and before July 1, 1995:

(i) Nursing facility services;

(ii) Home and community-based services; and

(iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services.

(c) The following Medicaid services provided after June 30, 1995 and before June 1, 2004:

(i) Nursing facility services;

(ii) Home and community-based services;

(iii) Adult day health;

(iv) Medicaid personal care;

(v) Private duty nursing administered by the aging and disability services administration of the department; and

(vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection.

(d) The following services provided on and after June 1, 2004:

(i) All Medicaid services;

(ii) Medicare savings programs services for individuals also receiving Medicaid;

(iii) Medicare premiums only for individuals also receiving Medicaid; and

(iv) Premium payments to managed care organizations.

(2) The client's estate is liable for all state-only funded long-term care services and related hospital and prescription drug services provided to:

(a) Home and community services' clients on and after July 1,



1995; and

(b) Division of developmental disabilities' clients on and after June 1, 2004.

AMENDATORY SECTION (Amending WSR 04-10-060, filed 4/30/04, effective 6/1/04)

WAC 388-527-2750 ((~~Waiver~~)) Delay of recovery ((if)) for undue hardship. The department delays recovery ((is waived)) under this section when the department determines that recovery would cause an undue hardship((, except as provided in subsection (3) of this section)) for a qualified individual(s). This ((waiver)) delay is limited to the period during which the undue hardship exists. The undue hardship must exist at the time of the client's death in order to be considered for a delay of recovery.

(1) Undue hardship exists when:

(a) The estate subject to adjustment or recovery is the sole income-producing asset of one or more ((of the heirs)) qualified individuals and income is limited; or

(b) Recovery would deprive ((an heir)) a qualified individual of shelter and the ((heir)) qualified individual lacks the financial means to obtain and maintain alternative shelter.

(2) Undue hardship does not exist when:

(a) The adjustment or recovery of the ((client's)) decendent's cost of assistance would merely cause the ((client's family members)) qualified individual inconvenience or restrict ((the family's)) his or her lifestyle ((-)); or

(b) ((The heir divests assets to qualify under the undue hardship provision)) The undue hardship was created as a result of estate planning methods by which the qualified individual or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid recovery from the estate.

(3) ((When a deceased client's assets were disregarded in connection with a long-term care insurance policy or contract under chapter 48.85 RCW, recovery is not waived.

(4)) When ((a waiver)) a delay in recovery is not granted, the department ((will)) provides notice to the person who requested the ((waiver)) delay of recovery. The ((denial of a waiver must state:)) department's notice includes information on how to request an administrative hearing to contest the department's denial.

((a) The requirements of an application for an adjudicative proceeding to contest the department's decision to deny the waiver, and

(b) Where assistance may be obtained to make such application:))

(4) When a delay of recovery is granted, the department may revoke the delay of recovery if the qualified individual(s):

(a) Fails to supply timely information and resource declaration when requested by the department;

(b) Sells, transfers, or encumbers title to the property;

(c) Fails to reside full-time on the premises;

(d) Fails to pay property taxes and utilities when due;

(e) Fails to identify the State of Washington as the primary payee on the property insurance policies. The person granted the delay of recovery must provide the department with documentation of the coverage status on an annual basis.

(f) Have a change in circumstances under subsection (1) of this section for which the delay of recovery due to undue hardship was granted; or

(g) Dies.

(5) When a delay of recovery is granted due to undue hardship, the department has the option to:

(a) Apply a lien; and/or

(b) Accept a payment plan.

(6) A person may request an administrative hearing to contest the department's ((decision in an adjudicative proceeding)) denial of delay of recovery due to undue hardship when that person ((requested the department waive recovery, and)) suffered a loss because ((that request)) the delay was not granted.

((+6) An application)) (7) A request for an ((adjudicative proceeding)) administrative hearing under this section must:

(a) Be in writing;

(b) State the basis for contesting the department's denial of the request ((to waive recovery)) for a delay of recovery due to an undue hardship;

(c) Include a copy of the department's denial ((of the request to waive recovery));

(d) Be signed by the ((applicant)) requester and include the ((applicant's)) requester's address and telephone number; and

(e) Be served, as described in WAC 388-527-2870, on the office of financial recovery (OFR) within twenty-eight calendar days of the date that the ((applicant received the department's)) department sent the decision denying the request for ((a waiver)) a delay of recovery. ((If the applicant shows good cause, the application may be filed up to thirty days late; and

((f) Be served on OFR as described in WAC 388-527-2795.

((+7)) (8) Upon receiving a request for an administrative hearing, the department notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.

(9) An adjudicative proceeding held under this section is governed by chapters 34.05 RCW and 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

AMENDATORY SECTION (Amending WSR 04-10-060, filed 4/30/04, effective 6/1/04)

WAC 388-527-2790 Filing ((a lien against real property)) liens. (1) The department files liens, seeks adjustments, and ((effects other recoveries for)) uses other means to recover the cost of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of a client consistent with 42 U.S.C. 1396p and chapters 43.20B RCW and 388-527 WAC.

~~(2) ((When the department seeks to recover from a client's estate the cost of medical assistance or state-only funded long-term care services, or both, provided to the client, prior to filing a lien against the deceased client's real property, notice shall be given to))~~ Prior to the department filing a lien under this section, the department sends a notice via first class mail to:

(a) The address of the property and other assets subject to the lien;

(b) The probate estate's personal representative, if any; ((or (b))) (c) Any other person known to have title to the affected property and/or to the decedent's heir(s) as defined by WAC 388-527-2730; and

(d) The decedent's last known address or the address listed on the title, if any.

~~(3) ((Prior to filing a lien against any of the deceased client's real or titled property, a person known to have title to the property will be notified and have an opportunity for an adjudicative proceeding as follows:~~

~~(a) Any person known to have title to the property will be served with a notice of intent to file lien, which will state:~~

~~((i)))~~ The notice in subsection (2) of this section includes:

(a) The ((deceased client's)) decedent's name, ((social security number, if known)) identification number, date of birth, and date of death;

((+ii)) (b) The amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the deceased client that the department seeks to recover;

((+iii)) (c) The department's intent to file a lien against the deceased client's property and other assets to recover the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the deceased client;

((+iv)) (d) The county in which the property ((is)) and other assets are located; and

((+v)) (e) The ((right of the person known to have title to the property)) procedures to contest the department's decision to file a lien by applying for an ((adjudicative proceeding with the office of financial recovery (OFR)) administrative hearing.

((+b)) (4) An ((adjudicative proceeding can determine whether)) administrative hearing only determines:

((+i)) (a) Whether the ((amount of)) medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the ((deceased client)) decedent alleged by the department's notice ((of intent to file a lien)) is correct; ((and))

((+ii)) (b) Whether the ((deceased client)) decedent had legal title to the property ((at the time of the client's death)); and

(c) Whether a lien is allowed under the provisions of Title 42 USC Section 1396p(a) and (b).

((+4) An application)) (5) A request for an ((adjudicative proceeding)) administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the ((department's notice of intent to file the)) lien;

(c) Be signed by the ((applicant)) requester and ((state))

must include the ((applicant's)) requester's address and telephone number; and

(d) Be served ((on OFR)) to the office of financial recovery (OFR) as described in WAC 388-527-2870, within twenty-eight calendar days of the date the ((applicant received the department's notice of intent to file the lien. An application filed up to thirty days late may be treated as timely filed if the applicant shows good cause for filing late; and

((e) Be served on OFR as described in WAC 388-527-2795)) department mailed the notice.

((+5+)) (6) Upon receiving a request for an administrative hearing, the department notifies persons known to have title to the property ((will be notified)) and other assets of the time and place of the ((adjudicative proceeding by the department when it receives an application for the same)) administrative hearing.

((+6+)) (7) An ((adjudicative proceeding)) administrative hearing under this section is governed by chapters 34.05 RCW and 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

((+7) If no known title holder requests an adjudicative proceeding, a lien will be filed by the department twenty-eight days after the date that the notice of intent to file the lien letter was mailed. The lien will be filed against the deceased client's real property in the amount of the correctly paid medical assistance or state-only funded long-term care services, or both.))

(8) If an ((adjudicative proceeding)) administrative hearing is conducted in accordance with this regulation, ((when)) and the final agency decision is issued, the department ((will)) only files a lien against the ((deceased client's real)) decedent's property ((for the amount of the correctly paid medical assistance or state-only funded long-term care services, or both, as established by that final agency decision)) and other assets if upheld by the final agency decision.

(9) If no known title holder requests an administrative hearing, the department files a lien twenty-eight calendar days after the date the department mailed the notice described in subsection (2) of this section.

## NEW SECTION

**WAC 388-527-2810 Life estates and joint tenancy.** (1) The department may enforce a lien authorized under this section against a decedent's life estate or joint tenancy interest in real property held by the decedent immediately prior to his or her death until the lien is satisfied. The department will not apply a lien against a decedent's life estate interest providing the decedent had not previously transferred an interest in the property while retaining a life estate.

(a) The value of the life estate subject to the lien is the fair market value of the decedent's interest in the property subject to the life estate immediately prior to death.



(b) The value of the joint tenancy interest subject to the lien is the value of the decedent's fractional interest he or she would have owned in the jointly held interest in the property had the decedent and the surviving joint tenants held title to the property as tenants in common immediately prior to death.

(2) The department's methodology for calculating the value of the life estate is determined using fair market value of the property. To determine the value of the life estate, the department multiplies the current fair market value of the property by the life estate factor in the life estate table. (The Centers for Medicare and Medicaid Services based table is found in the department's Eligibility A-Z Manual, Long Term Care, Appendix II and is available on-line at: <http://www1.dshs.wa.gov/esa/eazmanual/>.)

## NEW SECTION

**WAC 388-527-2820 Liens prior to death.** (1) Subject to the requirements of 42 USC Section 1396p and the conditions of this section, the department is authorized to file a lien against the property of a medical assistance client prior to his or her death, and to seek adjustment and recovery from the client's estate or sale of the property subject to the lien if:

(a) The client is permanently an inpatient in a nursing facility, intermediate care facility for individuals with mental retardation, or other medical institution as described in WAC 388-500-0005;

(b) The department determines, after notice and opportunity for a hearing, that the client cannot reasonably be expected to be discharged from the medical institution and return home; and

(c) None of the following are lawfully residing, in the client's home:

(i) The client's spouse;

(ii) The client's child who is under age twenty-one, or is blind or permanently and totally disabled as defined in Title 42 USC Section 1382c; or

(iii) A sibling of the client (who has an equity interest in such home and who was residing in the client's home for a period of at least one year immediately before the date of the client's admission to the medical institution).

(2) If the client is discharged from the medical facility and returns home, the department dissolves the lien.

(3) Prior to the department filing a lien under this section, the department sends a notice via first class mail to:

(a) The address of the property and other assets subject to the lien;

(b) The client's known address;

(c) Any other person known to have title to the affected property and the client's authorized representative, if any.

(4) The notice in subsection (3) of this section includes:

(a) The client's name, and the date the client began to receive services;



(b) The department's intent to file a lien against the client's property to recover the amount of medical assistance or state-only funded long-term care services, or both correctly paid on behalf of the client;

(c) The county in which the property and other assets are located; and

(d) The procedures to contest the department's decision to file a lien by applying for an administrative hearing.

(5) An administrative hearing only determines:

(a) Whether the medical assistance or state-only funded long-term care services, or both, on behalf of the decedent alleged by the department's notice is correct; and

(b) Whether the decedent had legal title to the identified property.

(6) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the lien;

(c) Be signed by the requester and must include the requester's address and telephone number; and

(d) Be served to the office of financial recovery (OFR) as described in WAC 388-527-2870, within twenty-eight calendar days of the date the department mailed the notice.

(7) Upon receiving a request for an administrative hearing, the department notifies persons known to have title to the property of the time and place of the administrative hearing.

(8) An administrative hearing under this subsection is governed by chapters 34.05 RCW and 388-02 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-02 WAC, the provision in this section governs.

(9) If an administrative hearing is conducted in accordance with this regulation, and the final agency decision is issued, the department only files a lien against the client's property and other assets if upheld by the final agency decision.

(10) If no known title holder requests an administrative hearing, the department files a lien twenty-eight calendar days after the date the department mailed the notice described in subsection (3) of this section.

#### NEW SECTION

**WAC 388-527-2830 Request for notice of transfer or encumbrance.** (1) When a client receives medical assistance subject to recovery under this chapter and the client is the holder of record title to real property or the purchaser under a land sale contract, the department files a request for notice of transfer or encumbrance [DSHS form 18-664 Notice of Possible Debt] with the county auditor for recording in the deed and mortgage records.

(2) The request for notice of transfer or encumbrance [DSHS 18-664] complies with the requirements for recording in RCW 36.18.010, and, at a minimum, contains the:

(a) Client's name and case identifier;

(b) Legal description of the real property, including parcel

number; and

(c) Mailing address for the department to receive the notice of transfer or encumbrance.

(3) The request for notice of transfer or encumbrance [18-664] described in subsection (1) of this section does not affect title to real property and is not a lien on, encumbrance of, or other interest in the real property.

(4) When filing a request for notice of transfer or encumbrance [DSHS 18-664] with the county auditor, the department gives the opportunity to request an administrative hearing as follows:

(a) Any person known to have title to the property is served with a copy of the notice. The notice states:

(i) The department's intent to recover from the client's estate the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the client;

(ii) The county in which the property is located; and

(iii) The right of the person known to have title in the property to contest the department's decision to file the notice by applying for an administrative hearing with the office of financial recovery (OFR).

(b) An administrative hearing only determines:

(i) Whether the amount of medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the client alleged by the department's notice is correct; and

(ii) Whether the client has legal title to the identified property.

(5) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the department's notice;

(c) Be signed by the requester and state the requester's address and telephone number; and

(d) Be served on OFR as described in WAC 388-527-2870, within twenty-eight calendar days of the date the individual received the department's notice.

(6) Upon receiving a request for an administrative hearing, the department notifies the persons known to have title to the property of the time and place of the administrative hearing.

(7) An administrative hearing under this section is governed by chapters 388-05 RCW and 388-02 WAC, and this section. If a provision of this section conflicts with a provision in chapter 388-02 WAC, the provision of this section governs.

(8) A title insurance company or agent that discovers the presence of a request for notice of transfer or encumbrance [DSHS 18-664] when performing a title search on real property must disclose the presence of the request for notice of transfer or encumbrance of real property in any report preliminary to, or commitment to offer, a certificate of title insurance for the real property.

(9) If the department has filed a request for notice of transfer or encumbrance [DSHS 18-664], any individual who transfers or encumbers real property must provide the department with a notice of transfer or encumbrance (DSHS 18-663) as described in WAC 388-527-2850.

## NEW SECTION

**WAC 388-527-2840 Termination of request for notice of transfer or encumbrance.** (1) The department files a termination of prior notice [DSHS 18-662] of transfer or encumbrance, with the county auditor for recording when, in the judgment of the department, it is no longer necessary or appropriate for the department to monitor transfers or encumbrances related to the real property.

(2) The termination of prior notice [DSHS 18-662] request for notice of transfer or encumbrance complies with the requirements for recording in RCW 36.18.010, and, at a minimum, contains the:

(a) Client's name and case identifier;

(b) Legal description of the real property, including parcel number; and

(c) Mailing address for the department to receive the notice of transfer or encumbrance.

## NEW SECTION

**WAC 388-527-2850 Notice of transfer or encumbrance.** (1) If the department has filed a request for notice of transfer or encumbrance [DSHS 18-664 Notice of Possible Debt], any individual who transfers or encumbers real property must provide the department with a notice of transfer or encumbrance [DSHS 18-663] or a substantially similar notice as required by chapter 43.20B RCW.

(2) The department's notice of transfer or encumbrance [DSHS 18-663] is available on-line at <http://www1.dshs.wa.gov/msa/forms/eforms.html> or by writing to Forms and Records Management Services, PO Box 45805, Olympia, WA 98504-5805.

(3) The notice of transfer or encumbrance [DSHS 18-663] must comply with the requirements for recording in RCW 36.18.010, and, at a minimum, contain the:

(a) Client's name and case identifier as listed on the department's request for notice of transfer or encumbrance;

(b) Recording date and recording reference as listed on the department's request for notice of transfer or encumbrance;

(c) Legal description of the real property as listed on the department's request for notice of transfer or encumbrance; and

(d) Type of instrument; and

(e) Recording date and recording reference.

(3) The notice of transfer or encumbrance [DSHS 18-663] or a similar notice and copy of the transfer or encumbrance related to the real property must be sent to the department as specified in WAC 388-527-2870.

## NEW SECTION

**WAC 388-527-2860 Interest assessed on past due debt.** (1) The recovery debt becomes past due and accrues interest at a rate of one percent per month on recoverable estate assets beginning nine months after the earlier of:

(a) The filing of the department's creditor's claim in the probate of the deceased client's estate; or

(b) The recording of the department's lien against the property of the deceased client in the county where the property is located.

(2) The department may waive interest if: (a) Insufficient cash, accounts, or stock exist to satisfy the department's claim and no sales of estate property has occurred despite its continuous listing or marketing for sale in a commercially reasonable manner for a reasonable fair market value; or

(b) Suit filed in the probate of the deceased client's estate resulted in the filing of a lis pendens or order prohibiting the personal representative from selling the estate property. However, this section does not apply to such suite contesting the department's assessment of interest or claim for reimbursement of medical assistance or state-only funded long-term care services debt.

## NEW SECTION

**WAC 388-527-2870 Serving notices on the office of financial recovery (OFR).** Serving legal notice on the office of financial recovery (OFR) requires the notice to be served either:

(1) In person at the Blake Office Park, 4450 10th Ave SE, Lacey, Washington; or

(2) By certified mail, return receipt requested, to Office of Financial Recovery, PO Box 9501, Olympia, WA 98507-9501.

## REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-527-2792

WAC 388-527-2795

Interest assessed on past due debt.  
Serving notices on office of  
financial recovery (OFR).